

(2008) 02 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No's. 1590, 1600, 1618, 1805, 1806, 1821, 1822, 1838, 1839, 1895, 1940, 2024, 2099, 2106 and 2129 of 2008

H.S. Prasannakrishnamurthy and Others

APPELLANT

Vs

The State of Karnataka under Secretary to Government
Urban Development Department and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 243T (4)

Citation : (2008) ILR (Kar) 2620 : (2008) 6 KarLJ 244 : (2008) 4 KCCR 309

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, for Jayakumar S. Patil Associates in Writ Petition Nos. 1590, 1600, 1618, 1838, 1839, 2024 and 2106 of 2008, A.K. Subbaiah and A.S. Ponnanna, in Writ Petition Nos. 1805, 1806 of 2008, M.V. Hiremath, in Writ Petition Nos. 1821, 1822 of 2008, S.S. Koti, in Writ Petition No. 1895 of 2008, Y. Lakshmikanth Reddy, in Writ Petition No. 1940 of 2008, N. Ravindranath Kamath, in Writ Petition No. 2099 of 2008 and K. Shashikiran Shetty, in Writ Petition No. 2129 of 2008, for the Appellant; B.V. Acharya, General and Ramesh B. Annappanavar, AGA, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—In all these petitions the allotment of the posts of Presidents and Vice-Presidents of City Municipal Councils, Town Municipal Councils and Town Panchayats to particular categories are challenged.

2. I proceed to consider the general submissions first and thereafter consider the specific contentions with reference to each of the petitions.

3. Sriyuths Jayakumar S. Patil, the learned senior counsel appearing for M/s. Jayakumar S. Patil Associates, A.S. Ponnanna, M.V. Hiremath, S.S. Koti, Y. Lakshmikanth Reddy, N. Ravindranath Kamath, K. Shashikiran Shetty, appearing for the petitioners urged the following contentions:

(i) The list allotting the posts of Presidents and Vice-Presidents of various Urban

Local Bodies ["U.L.B.s" for short] is drawn so as to favour a particular party, namely, the Indian National Congress Party. Its leader, Sri Mallikarjuna Kharge has written a letter on 18th October, 2007 to Sri Subhash Chandra, Secretary, Urban Development Department seeking the fixation of categories of his choice. Further, Sri Siddunyama Gowda, a former Union Minister has also sent a letter, dated 31st December, 2007 to the Additional Secretary, Urban Development Department in this regard.

(ii) The reservation list made by the erstwhile Government led by the Hon'ble Chief Minister, Sri H.D. Kumaraswamy is cancelled.

(iii) As per Rule 13(2) of Karnataka Municipalities (President and Vice-President) Election Rules, the reservation process has to start with Scheduled Tribe category and not with Scheduled Caste category.

(iv) The guidelines are issued without issuing the draft notifications calling for the objections from the public. Therefore the guidelines cannot be acted upon.

4. The learned Advocate General, Sri B.V. Acharya, replied as follows:

(i) The number of posts of Presidents and Vice-Presidents are fixed in proportion to their population in the State for each type of U.L.B. This is done first for SC/ST categories followed by other categories. One third of the total number of Presidents and Vice-Presidents are reserved for women.

(ii) The cycle of rotation of offices is reckoned from 1st June, 1994, the date of publication of the Karnataka Municipalities (President and Vice-President) Election Rules, 1995. The ensuing elections to the officers of the President and Vice-President are for the fifth term.

(iii) The reservations are made in respect of ten categories, namely, SC, SC(W), ST, ST(W), BCA, BCA(W), BCB, BCB(W), G and G(W) separately for Presidents and Vice-Presidents (the full form of abbreviations being Scheduled Caste, Scheduled Caste (Woman), Scheduled Tribe, Scheduled Tribe (Woman), Backward Class A, Backward Class A (Woman), Backward Class B, Backward Class B (Woman), General, General (Woman) for SC, SC(W), ST, ST(W), BCA, BCA(W), BCB, BCB(W), G and G(W) respectively). In respect of SC/ST categories, the U.L.B.s are arranged in the decreasing order of percentage of population of respective category; posts are reserved on the principle of rotation. Thereafter a combined list of all U.L.B.s in alphabetical order in English Language is prepared indicating the points fixed for SC(W)/ST/SC/ST(W). From this list, reservation of posts for other categories is done following the cycle-BCAW - G - BCBW - G - BCA - GW - BCB.

(iv) There is no discretion whatsoever in the matter of reserving the posts, as everything had to be done and is done as per the Karnataka Municipalities Act, 1964, the Rules framed thereunder and the guidelines contained in the Notification, dated 23rd January, 2008. He has also produced a consolidated chart containing the recommendations of leaders belonging to different political

parties for reserving particular posts of particular U.L.B.s for particular categories, He drew my attention to the recommendations made and the reservation now provided to buttress his submission that the State Government has not considered the representation of any political party.

(v) As far as the submission of Sri Jayakumar S. Patil that the process ought to have been started with ST category is concerned, Sri B.V. Acharya submitted that as per Section 42(2-A) of the Karnataka Municipalities Act it has to start with SC category. According to him, in case of the conflict between the statute and the rules, the provisions of the former shall prevail over the latter. That apart, as the Notification containing the guidelines providing for the starting of the process with Scheduled Caste itself is not under challenge; therefore the process of reserving the posts starting with SC category cannot be found fault with.

(vi) Sri B.V. Acharya submits that the process has been transparent and fair. He would not claim that the impugned reservations system is the best or perfect. But just because it is not perfect, it cannot be said to be bad. The Government would always proceed further striving towards perfection. There is always some scope for improvement. The demand of the petitioners that a particular post be given to a particular reservation slot, if acceded to, would open a plethora of claims and counter-claims making the process unending.

5. The submissions of the learned Counsel have received my anxious consideration, Sri Jayakumar S. Paul's submission that the whole roster arrangement is drawn to favour a particular political party is without any basis, My scrutiny of the chart produced by Sri B.V. Acharya reveals that the Government has not considered representation of any political party including Indian National Congress. In the cases of some U.L.B.s, the decision of the Government coincides with the recommendations of various political parties. The position being the same for all the political parties, it may be a mere coincidence.

6. No material whatsoever is produced before me to show that the erstwhile Government had ever prepared the roster allotting the posts of Presidents and Vice-Presidents of various U.L.B.s to particular categories. If there was no reservation list, the question of cancelling it does not arise at all.

7. The third submission advanced on behalf of the petitioners that as per Rule 13(2) of the Election Rules, the reservation process has to start with ST category and not with SC category merits serious consideration. Rule 13(2) of the Election Rules reads as follows:

13 Reservation of Offices of President and Vice-President-

(1) XXX XXX XXX (2) The Offices of President reserved for Scheduled Tribes shall be allotted by the Government to the Municipal Councils, or as the case may be, Town Panchayats having the highest percentage of population belonging to the Scheduled, Tribes with reference to the total population of the municipal area. The same procedure shall be followed by the Government for allotting to the

Municipal Councils, or as the case may be, Town Panchayats the same number of offices of Vice-President for members belonging to the Scheduled Tribes but excluding the Municipal Councils, or as the case may be, Town Panchayats in which the office of President have been already allotted to them.

8. No doubt a plain reading of Rule 13(2) of the Election Rules reveals that the process has to begin with the ST category. But then the Statute, under which the said Rules are made, speaks of reservation in the prescribed manner, which is as follows:

42. President and Vice-President:

(1) xxxxxxxxxxxx

(2) xxxxxxxxxxxx

(2A) There shall be reserved by the Government in the presented manner,-

(a) such number of offices of President and Vice-President in the State for the persons belonging to the Scheduled Castes and Scheduled Tribes and the number of such offices bearing as nearly as may be the same proportion to the total number of offices in the State as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State.

9. When the Statute first speaks of reservation for SC category, the Rules speak of reservation for ST category first. It is trite position in law that in case of the conflict between the Statute and the Rules, the former shall prevail over the latter.

10. Yet another aspect of the matter, which cannot be lost sight of is that the Notification, dated 23rd January, 2008 containing guidelines, which prescribe the roster cycle with SC(W) category first, is not challenged at all.

11. It is also profitable to refer to Article 243T(4) of the Constitution of India, which is extracted hereinbelow:

243T(4) Reservation of seats.- (1) to (3) xxx xxx xxx

(4) The offices of Chairpersons in the Municipalities shall be reserved for Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of the State may, by law, provide.

12. Thus the supreme law of the land speaks of reservation for the SC category first. I have therefore no hesitation in holding that the Government is justified in starting the reservation process with SC category.

13. The last ground urged by the petitioners is that the draft notification was not issued and the objections were not called for before issuing the Notification containing the said guidelines. As this Notification itself is not challenged, its validity cannot be assailed without there being a challenge to it.

14. I also find considerable force in the submissions of Sri B.V. Acharya that the impugned system of reservations may not be the perfect or the best; on the ground of it being not the best or the perfect, it cannot be held to be bad. That there is scope for improvement can not be a ground for my interference in the matter in the totality of the factual and legal matrix of this case. Improvement is always a process and not an occurrence.

15. It is also worthwhile to refer to the Constitution Bench judgment of the Hon'ble Supreme Court in the case of A.K.M. Hassan Uzzaman and Others Vs. Union of India (UOI) and Others, .

...no High Court in the exercise of its powers under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything, or direct anything to be done, which will postpone that process?.

16. In some cases, where a political party is in minority may be capturing the posts of President or Vice-President, as the said posts have fallen to certain categories; a party which has secured majority in an U.L.B., may not get the posts of the President and Vice-President of an U.L.B., because it does not have the councillors belonging to the particular categories, This must be creating not only heart-burning but also may be undermining the very principle of democracy which in the first place means the rule of majority. But then in any healthy polity, social and political dimensions of democracy are to be blended and balanced. This calls for a perspective distributive strategy. It is in this context that I issue the following directions:

(i) The Government shall publish a perspective roster for a block period of ten (10) years, within 6 months from today. This, in my considered view, would lend legitimacy and predictability to the system of roster and put an end to uncertainties.

(ii) The Government may be preparing the roster with the best of intentions in full adherence to the requirements of law. But to inspire the confidence of the people and to create an atmosphere of objectivity, I am of the considered view that the responsibilities of fixing the reservation points are to be entrusted to the State Election Commission. It is however for the State Government to consider making the amendment to the existing provisions for the purpose of entrusting the said responsibilities to the State Election Commission.

17. Now, I propose to consider the specific contentions advanced with reference to each of the petitions:

Writ Petition No. 1590 OF 2008

18. The post of the President of Hassan City Municipal Council is reserved for BCA(W). The petitioner demands that it be given to BCB category as per the guidelines at Annexure-C,

(a) The learned Senior Counsel, Sri Jayakumar S. Patil submits that if the first respondent's guidelines are strictly followed, the allotment to Hassan City Municipal Council Presidentship would have gone to BCB as per the sequence contained in xiii(c) of the guidelines.

(b) The learned Advocate General, Sri B.V. Acharya replied that the option available for the post of President of Hassan has been worked out so as to ensure that the said post is not allotted to the same category in the succeeding term until the cycle of reservation is complete. As the cycle of rotation for the post for four terms has been G-GW-BCA-G respectively, the options available were BCA(W)-BCB-BCB(W). As BCA(W) is the first category in the roster cycle [BCA(W)-G-BCB(W)-G-BCA-GW-BCB], it is allotted to BCA(W) category.

(c) As nothing wrong can be found with the process of determining the reservation for the office of the President of Hassan City Municipal Council, I dismiss this petition.

Writ Petition No. 1600 of 2008

19. The petitioners' grievance is over allotting the post of President of Channarayapatna Town Municipal Council to SC(W) category.

(a) Sri Jayakumar S. Patil, learned senior counsel appearing for M/s. Jayakumar S. Patil Associates for the petitioners submitted that as per the guidelines contained in the Notification dated, 23rd January, 2008, it should have been given to BCD category. If the sequence in guidelines in xiii(c) were followed, the only available option is BCB.

(b) The Government's stand is that the SC population of Channarayapatna Town Municipal Council is 1.1.50 per cent. In the descending order of the percentage of SC/ST population of the Town Municipal Councils, Channarayapatna is allotted the eligible category of SC(W).

(c) No good grounds are made out for my interference, writ petition is dismissed.

Writ Petition No. 1618 of 2008

20. The post of the President of City Municipal Council, Dandeli is allotted to BCA(W). The prayer of the petitioner is that it should be given to General category.

(a) Sri Jayakumar S. Patil, the learned senior counsel submits that reservation for different categories for the posts of President and Vice-President of the said U.L.B., is as follows:

President Vice-President 1st Term BCA G(W) 2nd Term BCBW) G 3rd Term G BCA(W) 4th Term G(W) BCA 5th Term BCA(W) G (b) He complains of the

repetition of reservation. For the first term it was BCA and for the ensuing term it is BCA(W). He submits that the category (BCA) remains the same even if it is given to a woman in that category. He further submits that the fourth term was reserved for a woman and in the fifth term also it is reserved for a woman. This is bad on account of the repetition of gender.

(c) The Government's reply is that the roster cycle followed is BCA(W) - G - BCB(W) - G - BCA - G(W) - BCB. The options available for President has been determined keeping in mind that a category i.e. Scheduled Caste, Scheduled Caste-Woman, Scheduled Tribe, Scheduled Tribe-Woman, Backward Class category A, Backward Class category A-Woman, Backward Class category B, Backward Class category B-Woman, General-Woman, allotted in the previous terms shall, as far as possible, not be allotted to the same category in the succeeding term, until the cycle of reservation is complete in such category.

(d) Tire learned Advocate General submits that election to the post of the President did not take place during the fourth term on account of the operation of the stay order. Therefore he submits that it may not be correct to state that for the fourth term also a woman was the President of the Dandeli City Municipal Council, As such the reservation in the third term is lo be taken as the reservation for and in the previous term.

(e) Thus the main contention advanced on behalf of the petitioner's side that there is a repetition of gender fails. The post of the President remaining vacant during its allotment to General category in the third term and its allotment to BCA(W) category for the fifth term, there is neither repetition of gender nor category, As the reservation has to be both vertical and horizontal, BCA and BCA(W) cannot be taken as one and the same.

(f) In the result, I dismiss the petition.

Writ Petition No. 1805 of 2008

21. The petitioner's grievance is over the allotting the post of President of Haveri City Municipal Council to ST Category. The petitioner demands that it should have been allotted to SC category.

(a) Sri A.S. Ponnanna, the learned Counsel appearing for the petitioner submits that the SC slot is not given to Haveri, although Haveri has a higher SC population percentage (11.57 per cent) than Bidar (10.44 per cent). Hitherto the post is not allotted to SC category in any of the five terms.

(b) On behalf of the Government it was submitted that allotment of the offices of the President and the Vice-President for the following City Municipal Councils is in the sequence of SC(W) - ST - SC - ST(W).

Sl. No. SCW ST SC STW 1. Gangavathi Chamarajanagar Chintamani Yadgir 2. Bijapur Haveri Rabakavi Banahatti No Seat 3. Bidar No Seat Harihara No Seat 4. Doddaballapur (c) It is further submitted that prior to Haveri, Bijapur at Sl,

No. 21 in the SC population list is given SC(W) reservation. Consequently Haveri at Sl. No. 7 of ST population list has been given ST reservation.

(d) I do not find any fault with what the Government has done. The allotment of post to a particular category depends on a plethora of factors like the need to avoid repetition of gender and category in all the U.L.B.s, percentage of SC/ST population, the number of seats reserved for each category. While doing this exercise exactitude may not be possible, particularly when the post of President was allotted to a General category both in the second term and in the fourth term.

(e) So long as there is no departure from the guidelines, I do not find it to be a fit case for my interference. I dismiss this petition.

Writ Petition No. 1806 of 2008

22. The petitioner's grievance is over the allotment of the post of President of Gokak City Municipal Council to General category.

(a) Sri A.S. Ponnanna, the learned Counsel for the petitioner submits that it should have been allotted to Scheduled Tribe category. Hitherto the said post was never allotted to a Scheduled Tribe. It is his case that, the allotment of the posts of President of Chamarajanagar, Yadgir and Haveri to Scheduled Tribe category is illegal; as these illegal allotments have created a situation where the post of the President of Gokak City Municipal Council had to inevitably fall to a General category.

(b) The reply of the State is that the post of the Vice-President of Gokak City Municipal Council is allotted to ST(W). Therefore the post of the President cannot be given to Scheduled Tribe category, as that would have violated guideline No. (v) of the guidelines contained in Notification, dated 23rd January, 2008. It is further submitted that the post of the President of Haveri City Municipal Council could not be given to SC category, as Haveri figures at Sl. No. 24 as per the SC population percentage list. Prior to Haveri, Bijpaur at Sl. No. 21 of SC population list was given SC(W) reservation. Consequently, Haveri at Sl. No. 7 of ST population list had to be given to Scheduled Tribe category.

(c) As what the Government is done is plausible, I dismiss this petition.

Writ Petition No. 1822 of 2008

23. The petitioner's grievance is over allotting the post of President of Shiggaon Town Municipal Council to BCA category.

(a) Sri M.V. Hiremath, the learned Counsel for the petitioner submits that it should have been reserved to ST(W) category. He submits that hitherto it has not been given to ST(W) category.

(b) The reply of the Government is that out of 94 Town Municipal Councils, only 2 are reserved for ST(W). Based on the criteria of percentage of population, they

have been allotted to Bannur and Gundlupet Town Municipal Councils. Gundlupet has 2288 per cent of ST population. The said figures for Bannur and Shiggaon are 13.18 and 1.25 per cent respectively. Therefore, Shiggaon has to wait for its turn to get the ST(W) slot.

(c) I find the explanation of the Government convincing, I therefore hold that the Government is not at fault for not reserving the post of Shiggaon Town Municipal Council for ST(W).

(d) I dismiss this writ petition.

Writ Petition No. 1821 of 2008

24. The petitioner's grievance is over allotting the post of President of Haveri City Municipal Council to ST category. Sri M.V. Hiremath, the learned Counsel for the petitioner submits that it should have gone to SC(W).

(a) The submission on behalf of the Government is that SC and ST seats have been allotted based on the ratio of highest percentage of SC and ST population respectively to the total population of the city based on 2001 census. Lists of City Municipal Councils arranged in SC and ST descending order have been reckoned with. Prior to Haveri, Bijapur at Sl. No. 21 of SC population list has been found rightly eligible and considered for SC(W) reservation. Haveri at Sl. No. 7 of ST population list has been considered for ST reservation. Since Haveri is considered under ST reservation and Bidar has been considered for SC(W) reservation at Sl. No. 29, Haveri has not got SC(W) reservation.

(b) The Government cannot be found to be at fault for what it has done. Further, I have dismissed writ petition No. 1805 of 2008 in respect of Haveri City Municipal Council. I therefore decline to interfere and the writ petition is dismissed.

Writ Petition No. 1839 of 2008

25. The learned Senior Counsel, Sri Jayakumar S. Paul for the petitioner submits that the post of the President of Hiriyur, Town Municipal Council is wrongfully allotted to ST category in violation of the guidelines at Annexure-B. He requests that a direction be issued to allot the said post to ST(W) category or in the alternative for any other woman category. He submits that till now the post in question was never allotted to a woman in any category. According to him it should have been given to ST(W), as per the guidelines of respondent No. 1.

(a) The reply on behalf of the Government is that Government reserved two posts of Presidents for ST(W), which got exhausted up to Bannur Town Municipal Council. By following the sequence of reservation, as enumerated in the cycles, Hiriyur has got ST reservation for the Office of the President.

(b) The four cycles, as furnished in the counter of the State Government, are extracted hereinbelow;

I Cycle based on the highest percentage of SC and ST Population List.

SCW Mudhol (at Sl. No. 26 of SC population list)

ST Deuadurga (at Sl. No. 1 of ST population list)

SC Madhugiri (at Sl. No. 33 of SC population list)

STW Gundlupet (at Sl. No. 6 of ST population list)

II Cycle

SCW Gowribidnur (at Sl. No. 45 of SC population list)

ST Sandur (at Sl. No. 4 of ST population list)

SC K.R. Nagar (at Sl. No. 36 of SC population list)

STW Bannur (at Sl. No. 8 of ST population list)

III Cycle

SCW Mudalgi (at Sl. No. 50 of SC population list)

ST Hiriyur (at Sl. No. 12 of ST population list)

SC Manvi (at Sl. No. 47 of SC population list)

IV Cycle

SCW Channarayapatna (at Sl. No. 52 of SC population list)

ST Bagepalli (at Sl. No. 14 of ST population list)

SC Kanakapur (at Sl. No. 49 of SC population list)

(c) The allotment of the roster point depends on the cycle, percentage of SC/ST population of a particular U.L.B., the need to ensure non-repetition of both category and gender with reference to the immediate preceding term and the allotment of the post of other Town Municipal Councils to particular categories. The arithmetical precession may not be possible in an exercise of this nature. I do not find any repetition while allotting the post in question.

(d) No good grounds are made out for my interference in the matter. I dismiss the writ petition.

Writ Petition No. 1895 of 2008

26. The petitioners are aggrieved by the reservation of the offices of the President and the Vice-President of Mandya Town Municipal Council for the categories of G(W) and SC respectively. They demand them for the BCB Category, as till now, i.e. for the last four terms, neither the office of the President nor the office of the Vice-President of Mandya City Municipal Council was allotted to the said category.

(a) Sri S.S. Koti, the learned Counsel for the petitioners submits that people belonging to BCB constitute sizeable segment of Mandya's population, According to him, the exclusion of BCB category smacks of capriciousness.

(b) The case of the Government is that the roster cycle followed is BCAW - G - BCBW - G - BCA - GW - BCB, by arranging the list of all the CMCs in alphabetical order in English language. As Mandya is at Sl. No. 28 in the list prepared in an alphabetical order and as per the cycle and rotation, CMC Mandya is eligible for BCA(W)/BCB only. BCA(W) category having only 4 seats got exhausted at Sl. No. 20, CMC, Hospet. BCB category having only two seats got exhausted at SI, No. 7 CMC Channapatna, BCB(W) category has only one seat and was allotted to CMC Bagalkot at Sl. No. 1 in the list. While doing the fitment for all the 44 City Municipal Councils, G(W) and SC categories have fallen to the posts of President and Vice-President of Mandya City Municipal Council.

(c) I do not see any infirmity in earmarking the posts of President and the Vice-President of Mandya City Municipal Council for GW and SC categories respectively.

(d) I dismiss this petition.

Writ Petition No. 1940 of 2008

27. The petitioners are aggrieved by the allotment of the post of President of Town Panchayat, Kamalapur to G(W) category. They want that it be given for BCB(W) category.

(a) Sri Y. Lakshmikant Reddy, the learned Counsel appearing for the petitioners submitted that if the sequence of BCA(W) - G - BCB(W) - G - BCA - G(W) - BCB, as per the guidelines is strictly followed, the post of President of Kamalapur Town Panchayat has to fall to BCB(W) category.

(b) The stand of the Government is that the available categories for allotment of reservation in the fifth term will be BCA(W)/BCB(W)/G/GW/BCB. As BCA(W) and BCB(W) were exhausted and General category is already provided in the immediately preceding term, the next category to which the post has to go is G(W). The allotment to a particular category depends on the number of Town Panchayats, number of posts reserved for different categories, the category to which the post was allotted in the preceding term, the exhaustion of a particular slot for the Town Panchayat at the earlier points in the list. The petitioners, as a matter of right, cannot demand that the post of the President of Kamalapur Town Panchayat be allotted to BCB(W) category only.

(c) I see no reason for my interference in the matter. I dismiss the writ petition.

Writ Petition No. 2024 of 2008

28. The petitioners are aggrieved by the allotment of the post of the President of Hosanagar Town Panchayat to SC(W) category. They want that it be reserved for SC category.

(a) The learned Senior Counsel, Sri Jayakumar S. Patil, for M/s. Jayakumar S. Patil Associates for the petitioners submitted that Sarguru, Jog-Kargal, Kudligi and Kushalanagar, which have the higher percentage of SC population, ought to have been allotted with SC(W) and not Hosanagar Town Panchayat.

(b) The learned Advocate General, Sri B.V. Acharya submitted that the present Government is facing some difficulty in fixing the roster points on account of the repetition of reservation for the third and fourth term, He submits that the office of the President of Hosanagar Town Panchayat had gone to General category both during the third and fourth term. For such a repetition for the earlier terms, the present Government cannot be blamed. He submitted that fixing the roster points depending on the list of SC/ST population for different Town Panchayats, SC(W) category was the only option available for the office of the President of Hosanagar Town Panchayat. The statement of objections filed on behalf of the Government gives the cycles based on the SC/ST list as follows:

President

I Cycle (based on highest percent of SC & ST Population list)

SCW Sarguru (at St.Nb.5 of SC population list) Since SC category repeated in Sl. No. 1, 3, 4 and BCB(W) Category in 4th term was allotted to town No. 2 i.e. Hosur.

ST Tekkalkot (at Sl. No. 3 of ST population list)

SC Jog-Kargal (at Sl. No. 14 of SC population list)

STW T. Narusipura (at Sl. No. 4 of ST population list)

II Cycle

SCW Kudligi (at Sl. No. 17 of SC population list)

ST H.D. Kote (at Sl. No. 7 of ST population list)

SC Kushalnagar (at Sl. No. 21 of SC population list)

III Cycle

SCW Hosanagar (at Sl. No. 23 of SC population list)

ST Piriapatna (at Sl. No. 13 of ST population list)

SC Yelburga (at Sl. No. 29 of SC population list)

IV Cycle

SCW Hungunda (at Sl. No. 33 of SC population list)

SC Belthangadi (at Sl. No. 35 of SC population list)

V Cycle

SC Somuarpet (at Sl. No. 36 of SC population list)

VI Cycle

SC Gudibande (at Sl. No. 41 of SC population list)

VII Cycle

SC Pandavapum (at Sl. No. 43 of SC population list)

(c) The fixing of the roster point depends on the cycles and the fitment of the local body to the available point depending on SC/ST population. Nobody has any vested right to demand that the Office of the President of a particular Town Panchayat be allotted to a particular category.

(d) The petition is dismissed.

Writ Petition No. 2099 of 2008

29. The grievance of the petitioner is over the allotment of post of President of Virajpet Town Panchayat to BCB(W) category. The petitioner wants the same to be allotted to SC category.

(a) Sri Ravindranath Kamath, the learned Counsel for the petitioner has urged the following contentions:

i) The guidelines contained in the Notification, dated 23.01.2008 are issued without any application of mind. In paragraph 3 of the preamble, a reference is made to the order, dt.08.11.2004 passed in writ petition No. 39675/2004 and other connected cases. As a matter of fact, no order is passed on the said date. Further on 15.04.2005, the learned Single Judge has referred the matter to the Division Bench. The matter is pending consideration before the Division Bench. He therefore submits that when the Division Bench is seized of the matter, the respondents are not justified in issuing the said guidelines and fixing the roster points for the posts of the President and Vice-President of the local bodies.

ii) The Government has not framed proper Rules providing for fixing the roster points based on the draw of lots.

iii) He has also objected to the posts of Presidents of three Town Panchayats in the alphabetical order at Sl. Nos. 58, 59 and 60 namely, Soraba, Sringeri and Sulya being allotted to the General category.

iv) As the Virajpet Town Panchayat has higher percentage of Scheduled Caste population than Somwarpet Town Panchayat, the office of the President of Virajpet Town Panchayat ought to have been reserved for SC slot.

(b) The learned Advocate General, Sri B.V. Acharya submitted that putting off the election to the office of the President and the Vice-President until the disposal of the referred matter by the Division Bench, would be against the constitutional mandate, which is for the holding of elections to the local bodies. He also

submitted that the Division Bench of this Court had put off the elections to the local bodies by its order, dated 7.8.2007 in writ petition No. 12391 of 2007. This order was taken to the Hon''ble Supreme Court by the State Election Commission in Special Leave to Appeal (Civil) No. 14334 of 2007. The Hon''ble Supreme Court by its order, dated 27.8.2007 stayed the order of the Division Bench.

(c) The learned Advocate General has also submitted that the assignment of the category depends not merely on the percentage of the SC/ST population but also on the cycle and the exhaustion of a particular slot by and at a particular local body and the allotment of categories to other local bodies.

(d) As far as the first submission of Sri Kamath is concerned, just because the notification containing guidelines makes a wrong reference, neither the guidelines as such nor the preparation of the roster thereon, can be held to be bad.

(e) The statement of objections filed on behalf of the Government shows that Somwarpet has higher percentage of SC population (11.94%) than Virajpet (9.77%). The Town Panchayat, Virajpet has to wait for its turn for the allotment of the SC slot.

(f) I am also not impressed of the submission of the petitioner's learned Counsel that the Government has to defer the elections pending adjudication of the matter before the Division Bench. Constituting the local bodies in a time-bound manner is a constitutional mandate. In the totality of the circumstances and during the currency of the process of election, no interference from this Court is warranted.

(g) In the result, I dismiss this petition.

Writ Petition No. 2106 of 2008

30. The petitioner is aggrieved over the allotment of the Office of President of Bidar City Municipal Council to SC(W) category. He wants that it be allotted to SC category.

(a) The learned Senior Counsel, Sri Jayakumar S. Patil appearing for M/s Jaykumar S. Patil Associates submits that the allotment of the post in question to SC(W) category runs contrary to the guidelines. He submits that Bidar having the highest SC population of 10.44 per cent, ought to have been assigned with SC category for the office of its President.

(b) It is the case of the Government that the only option available for the office of the President is SC(W), which is why it is given to Bidar. The petitioner can have no objection to inner reservation for a woman within the SC category.

(c) I therefore dismiss the writ petition.

Writ Petition No. 2129 of 2008

31. The petitioners have impugned the allotment of the post of the President

Bijapur City Municipal Council to the category of SC(W). They want that it be allotted to the SC category.

(a) As SC(W) category was not allotted in the earlier terms to the post in question, I do not propose to interfere in the matter.

(b) The statement filed on behalf of the Government shows that the post in question was given to General category for three consecutive terms. There is no way of knowing why it was given to the General category for three consecutive terms. The present assignment of roster slot has at least ensured one thing and that is non-repetition of category. I see no ground whatsoever for my interference. I dismiss this petition.

Writ Petition No. 1838 of 2008

32. The grievance of the petitioner is over the allotment of the post of the Vice-President of Sadalaga Town Panchayat to G(W) category.

(a) Sri Jayakumar S. Patil, the learned Senior Counsel submits that there is a repetition of gender in respect of the office of the Vice-President of Sadalaga Town Panchayat. As the office of the Vice-President of Sadalaga Town Panchayat had remained vacant for the fourth term, the third term is to be taken as the term immediately preceding the fifth term. As the third term had the Vice-President allotted to G(W) category, it cannot be allotted to General category in the succeeding term, namely, the fifth term also.

(b) The learned Advocate General, Sri B.V. Acharya fairly admitted that an error has crept in. Based on the statement of objections, he submitted that the post of the Vice-President of Sadalaga Town Panchayat would now be allotted to the SC category.

(c) In the result, this petition stands allowed in part. The request of the petitioner for the allotment of the post in question to SC(W) category is however not acceded to, as there is no basis for claiming the same.

(d) There is yet another dimension to the matter. There is an impleading application filed by Smt. Rajamma Arnua Desai and five other elected councillors of Sadalaga Town Panchayat. As I am disposing of the petition based on the rectification being effected by the Government, it has become wholly unnecessary to pass* any orders on the impleading application. However liberty is reserved to the impleading applicants to challenge the rectification in question, if they are so aggrieved and advised.

(e) This petition is allowed in part.

ORDER

33. In the result, the Writ Petition No. 1838 of 2008 is allowed in part and Writ Petitions No. 1590, 1600, 1618, 1805, 1806, 1822, 1821, 1839, 1895, 1940, 2024, 2099, 2106, 2129 of 2008 are dismissed, but subject to the directions and

observations made in paragraph 15 hereinabove. No order as to costs.